

THE HONOLULU REPUBLICAN.

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HONOLULU, H. T., SATURDAY, SEPTEMBER 1, 1900.

PRICE FIVE CENTS

THE AVERY CASE IS THROWN OUT OF COURT.

Important Decision By
Judge Estee of Dis-
trict Court.

THE MATTER OF JURISDICTION.
IT PLAYS NO UNIMPOR-
TANT PART WITH COURT IN CON-
SIDERATION OF CASE.

The Law in the Case Clearly Laid
Down by the Distinguished
Jurist—The Decision
in Full.

In the United States District Court yesterday Judge Estee rendered the following decision in the Avery-King case. Avery brought action against King in the United States District Court to recover \$5,000. It was an action in tort. Avery, a citizen of the United States, was arrested on an embezzlement charge. He established his innocence before a district magistrate and was discharged. Subsequently Avery was indicted by the grand jury on a charge of embezzlement. Judge Stillman dismissed the charge.

The question in the District Court was one of jurisdiction. In a very learned opinion the court says:

In the District Court of the United States, in and for the Territory of Hawaii.

Eugene Avery, plaintiff, vs. William C. King, defendant. At law, in tort.

This is an action in tort brought by the plaintiff against the defendant, having his right to bring the action in this court upon the following allegations of jurisdiction:

"The undersigned plaintiff, Eugene Avery, complains of William C. King, who resides in Honolulu, in the island of Oahu, and within the jurisdiction of the court, and claims the sum of five thousand dollars for damages resulting to him by reason of the trespasses hereinafter in this complaint alleged and set out.

And the said plaintiff alleges that he is a citizen of the United States of America, and that his permanent place of abode is in the city and county of San Francisco, state of California, United States of America.

And the said defendant, W. C. King, is a citizen of the Territory of Hawaii, and resides at Honolulu, in the said Territory, and within the jurisdiction of this court."

The defendant demurred to the plaintiff's declaration on two grounds, only one of which the court considers it necessary to pass upon, to-wit:

"That the said declaration does not state facts sufficient to give this court jurisdiction of said case, but on the contrary it appears on the face of the said declaration that this court has no jurisdiction of the case."

The single question to be considered is, can a citizen of a state sue a citizen of a Territory of the United States in the Federal Court, that being the only jurisdictional ground.

The act of Congress of the United States determining the jurisdiction of Circuit Courts of the United States, as amended August 13, 1888, fixes that jurisdiction as follows:

"That the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different states, or a controversy between citizens of a state and foreign states, citizens or subjects."

United States Statutes at Large, Vol. 25, p. 424.

It appears affirmatively from the declaration of plaintiff that the defendant is a citizen of the Territory of Hawaii and that the plaintiff is a citizen of the United States of America, and that his permanent place of abode is in the city and county of San Francisco, state of California.

Assuming that the plaintiff intended to allege that he is a citizen of California because he alleges that his permanent place of abode is in the city and county of San Francisco, state of California, yet he does not show thereby that he is a citizen of one state and the defendant a citizen of a different or foreign state.

Does that fact fail to bring the action within the jurisdiction of this court? In the opinion of the court it does. That has been the rule adopted since the earliest organization of the Federal Courts of the United States.

One of the leading opinions rendered by the Supreme Court of the United States on this subject and under substantially the same statute was that written by Chief Justice Marshall in the case of New Orleans vs. Winter, et al., 1 Wheaton, (U. S.) p. 91, wherein it is held that the plaintiff is a citizen of a Territory and the defendant of a state, the courts of the United States are not thereby enabled to take jurisdiction."

The converse of this must necessarily be the law, namely, that the citizen of a state cannot for legal reasons sue a citizen of a Territory in a Federal Court.

The court, saying further in New Orleans vs. Winter (supra)—"That it had been attempted to distinguish a territory from the District of Columbia, but the court is of opinion that the distinction cannot be maintained. They may differ in many respects, but neither of them is a state in the sense in which that term is used in the constitution." Referring to case of Hepburn, et al., v. Ellis, 2 Cranch, 444.

See also Barney vs. Baltimore City, 6 Wall. (U. S.) 381.

Hepburn vs. Baltimore City, 186 U. S. p. 286.

Snead vs. Sellers, et al., 64 Fed. Rep. 371.

Mansfield, et al., vs. Swan, et al. 111 U. S. 379.

There seems to be an unbroken line of decisions sustaining this position. A territory of the United States is neither a foreign state nor a different state of the Union nor a state of any character. Each state is an independent political organization. Each territory is a dependent political organization and does not possess an attribute of state sovereignty. Congress is the representative of the people of the state, not the people of the territories, and Congress controls the territories, therefore, is not a state within the meaning of the constitution and laws of the United States and this court has no jurisdiction to determine the merits of this action.

It has been held by the Supreme Court of the United States that "if it does not appear at the outset that the suit is one of which the Circuit Court at the time its jurisdiction is invoked could properly take cognizance, the suit must be dismissed. (Third Street and Suburban Railway Co. vs. Lewis, 175 U. S. 457).

It is therefore ordered that the demurrer of defendant be sustained and that the action be dismissed without prejudice. ESTEE, Judge.

August 31, 1900.

AORANGI ARRIVES.

Anchored Off Port Last Night Until Today.

The steamer Aorangi from Vancouver arrived off the harbor last evening about eleven o'clock and was boarded by Pilot Cameron, who anchored her. She will come in at daylight this morning. There are several passengers for this port, among them being Allen St. C. Smith, who went to the sound some time ago to make arrangements for the shipment of beer to this port, and Mr. N. E. Gedge of the Inter-island Steamer Company returning from his vacation.

REPUBLICAN CLUBS
SELECT CANDIDATES.

MANY MEETINGS LAST NIGHT TO PREPARE FOR TODAY'S PRIMARIES.

Fifth Precinct of the Fourth District Furnishes the Liveliest Meeting of All—The Banner Club.

The Fifth precinct of the Fourth district held a hot and stormy meeting last evening at the drill shed. Some illegal business was transacted and then, upon the arrival of Chairman Garvin, all the proceedings were demolished.

Oscar Lewis, as temporary chairman, opened the ball. John Short resigned as secretary and G. Rose was elected in his place. Then the fun began. Notwithstanding the fact that the judges of election still remained in office, the meeting set to work to elect new judges. A host of candidates were in the field. A. P. Taylor, H. Berger, A. B. Hewitt, S. P. Heine, G. Rose, D. Naome and Frank Wilbertson were the nominees. Of this number A. B. Hewitt, David Naome and S. P. Heine were the only ones to survive the storm of ballots.

At this point, when the discussion waxed hot and furious, C. L. Garvin, the permanent chairman of the club, appeared upon the scene and took the chair. Then the slaughter began. The lately elected judges fell with one swoop. Garvin stated that the old judges were still in office and that only two new ones were needed, owing to resignations. Another list of candidates was presented. G. Rose and J. Mahoney were elected.

The nominations for delegates were as follows: Samuel Johnson, Al Moore, Albert Trosk, Oscar C. Lewis, W. H. Conney and J. Keohokii.

After vainly trying to delay the election of officers for the ensuing year the following were elected: President, O. Swain; secretary, G. Rose; treasurer, E. J. Healey.

Second Precinct, Fourth District.

The republicans of the Second precinct of the Fourth district are up and doing, as is attested by the enrollment of the club, which now reaches 173, fourteen new members being admitted to the club last night. This club elected its officers last night as follows: President, W. C. King; vice president, Horace Wright; secretary, H. C. Morton; treasurer, Wm. Harrison; executive committee, H. E. M. Robertson, B. S. Gregory, A. V. Gear, David Naoholewa, C. L. Crabbe; judges of primaries, C. H. Williams, D. L. Naome, James Nott, Jr., B. F. Gregory, David Naoholewa, George Rosa, C. L. Naome, A. Nelson, A. V. Gear.

Sixth Precinct, Fourth District

At a meeting of the members of the Republican club of the Sixth precinct of the Fourth district held at the Chamber of Commerce last night, several of the old members of the club were compelled to drop out owing to removal from the district, among them being the chairman and secretary of the club, Frank Hoogs was elected temporary chairman and S. I. Ramsey temporary secretary. The nominees for permanent officers who will be voted on at the primaries are: President, Frank Hoogs; secretary, L. H. Wolf; treasurer, Dr. George W. Burgess; judges of election, Capt. J. Bray, Frank Hoogs, H. Sturdivant. Delegates to the district convention: Dr. Burgess, Frank Hoogs, L. H. Wolf, Dr. C. B. Cooper, T. E. Krouse. The club membership numbers 27.

Sample of "Clean and Respectable" Journalism in Honolulu.

At the resumption of the Barney murder trial in Judge Stillman's court yesterday morning Lorrin Andrews, counsel for the defendant, called attention to the following comment which appeared in yesterday morning's Advertiser:

"Judging from the first day's trial of the murder case against Samuel Barney for killing John W. Lorbeer, the case against him looks black and unless there are further developments more favorable to him it would appear that he will scarcely escape a verdict of guilty."

Recently much has been said by the newspaper barlots of this town about yellow journalism, ochre-colored tints, saffron-hued tinges between column rules, amber perspectives, old gold glows, but is there anything in the recent introduction of yellow journalism in Honolulu where a deliberate attempt has been made to deprive a man of his life by prejudicing a jury against him?"

Mr. Andrews moved that the court make an order restraining the Advertiser from commenting on the guilt or innocence of the defendant or on the merits or demerits of the case.

Attorney General Dole concurred in the motion.

Judge Stillman thought that it would be only necessary to caution the talented reporters of the Honolulu press against injecting into their reports a verdict of guilty or not guilty prior to hearing from the jury in the matter.

MONDAY'S RACING ENTRIES.

Good Sport is Assured at Kapiolani Park Labor Day.

The Driving association met last evening and looked over the entries for the races on Monday. They are as follows: 2:40 class, S. Grigsby's Dan McCarthy, Bonnie Judd's Monogues, Jaeger's Fred Bros.

Three-fifths mile running race—W. Cornwall's Venus and Rosebud, Judd's Lei, G. Andrews' Antidote, J. Wright's Walpaha and M. Rodriguez' Dan.

One-half mile running race—W. Cornwall's Venus, Prince David's Sir Casimere, C. H. Judd's Leis, Messrs. Morris and Clapham were appointed superintendents of paddock.

The meeting was informed that there would be two nicely equipped and equipped barrels of ice water at the track so that every one might keep cool and enjoy themselves. L. H. Dee furnished the barrels, West did the painting and lettering, E. O. Hall & Son supplied the faucets, the dippers and chains came from W. W. Dimond & Co., the ice from the Oahu Ice and Cold Storage Co., and the water from old Neptune.

POLITICS ARE TABU.

Custom House Employees Need Not Fear Campaign Collectors.

BARNEY SENTENCED TO FIFTEEN YEARS.

The Jury Returns Verdict of Man-slaughter.

KILLING OF LORBER DESCRIBED.
THE CONVICTED MAN GRAPH-
ICALLY TELLS THE STORY
OF THE AFFRAY.

Strong Testimony Offered by De-fendant That the Fatal Shot Was Fired in Self Defense.

"Mr. Barney, I believe from the evidence that women and whisky have been your undoing. I do not believe that when the jury sentenced you to man-slaughter in the first degree they intend you to spend your life in prison. Therefore I sentence you to imprisonment at hard labor for fifteen years."

Such was the sentence imposed by Judge Stillman last night on Samuel Barney for the killing of John W. Lorbeer, yardmaster of the Oahu Railway company, on August 12th.

The scene was an affecting one. Under the electric lights Barney heard the words of so much import to him. He heard them with a slight twitching of the face and that was all.

The jury was out but a short time when they returned a verdict of man-slaughter in the first degree.

Barney was ably defended by Attorneys Lorrin Andrews and Frank E. Thompson. Mr. Thompson's opening statement was a forcible presentation of what the defense intended to prove. Mr. Andrews' address to the jury after the evidence was in was logical and possessed the merits of conviction.

The salient features of the case, as Barney's testimony were:

"I have followed the profession of railroading for a number of years. I knew Lorbeer six weeks before the shooting took place. I had no feeling whatever against him. On the day of the shooting I had intended to go to Kahuku with a number of other railroad employees on a picnic. I had made no threat against Lorbeer. I bought the pistol five or six weeks before I was arrested, was told by Superintendent Denison that I would be placed in charge of some twenty-five or thirty Japanese in an out of a way place; that I should be practically alone with them. I kept the revolver in the car.

"On the morning of the 12th of August I met Robert Dods before going to the train. When I met Dods I asked him about the plantation (Kahuku). I had had some previous difficulty with the Portuguese (alluding to Brakeman Gabriel Cabral). When I got on the engine he said: 'You hit him. I hit him. Lorbeer said: 'What is the matter with you?' I said: 'That's all right; there is nothing the matter with me.' I walked up towards the car on which Lorbeer was standing. My intention was to get on board of the car."

"I tried to board the car, when Lorbeer gave me a glancing blow on the side of the neck. I turned around and got another blow on my cheek. I then got a blow in the breast. It felt as if I had been stabbed with a knife. Lorbeer had me on the ground and was hitting me with both hands. I pulled the revolver and fired."

"The second shot I think was caused by him pulling the weapon while it was in my hands. I don't know if this was so. I was in great pain. We had quite a scuffle. He kept pounding me. I shouted for help and told Lorbeer to take the revolver."

Few men have ever taken the witness stand charged with the taking of human life. Dods is a sincere man; at least he told a sincere story. In a mild way he narrated what happened on that fatal August morning. Lorbeer jumped from the train and struck Barney several times in rapid succession. Barney retreated, Lorbeer following him. Lorbeer rubbed at the defendant. The second shot was fired when the men were down.

Officer A. J. Haaranah was the next witness. An hour after the affray took place he inspected Barney's body. Barney's chest was marked and bruised. It was red and slightly discolored in spots. There was a well-defined mark over the left temple. Four or five discolorations marked where the blows were delivered. The mark on the forehead clearly indicated contact with something hard.

Barney then took the stand. At the conclusion of Barney's testimony the court took a recess until 7 o'clock in the evening.

The prosecution was conducted by Attorney General Dole and Deputy Attorney General Calhoun.

Defendant's attorneys gave notice of a motion for a new trial.

PREJUDGING THE CASE.

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POLITICS ARE TABU.

Custom House Employees Need Not Fear Campaign Collectors.

The custom house men will take no part in politics. The word has been spoken. Shades of Olus; but what will McStocker say when he hears the news?

By order of Collector Stackable notice has been posted in the port surveyor's office telling the men that they are bound by no obligation to donate any part of their salaries to any campaign.

They will go up to Reserve plantation and ask them to dig down in their jeans and help that person who have to pay a big fine and maybe go to jail. The fine for soliciting aid for campaign purposes in the sacred confines of the custom house is \$200.

Considering that the men in the custom house have received but seventeen days pay since they started to work for Uncle Sam, it is probable that anyone asking any of them for money to help the political pot will be well willed to kill it. It is not probable that he would live long enough to be fined. The boys in the customs department have stopped looking for the money that is coming. They are now very much exercised over the non-arrival of those cups supposed to have been on the Australia.

THE WHITE GHOST HERE

Archie Young the Possessor of a Great California Pacer.

The fine pacing horse Waldo J. arrived here in the Bryant. He was imported by Mr. Archie Young and will be used as a road horse. The animal has a very fine record, and was known in California racing circles as the "White Ghost." The last season he carried a wonderful record for speed and staying qualities.

Waldo J. is a gray horse about nine years old and has a record of 2:38. Two notable races which he won were against W. Wood and Silkwood and Chelalis. Against the first two horses he was beaten in the first heat by Wood in 2:57. In the second heat Silkwood won in 2:38. The next three heats were taken by Waldo J. and were all under 2:39. In the match race with Chelalis who has a record of 2:35, there were four heats; Chelalis took the first in 2:38. The next three heats were taken by Waldo in 2:38, 2:39, 2:39. In the last heat Chelalis was shut out.

MISS LOWERS' CARD PARTY.

Miss Harriet Lowers entertained a number of her friends at a progressive hearts last night, tables being arranged for seven sets of four each. The party was given in honor of Miss Paris, who leaves on the Australia for San Diego, where she goes to make her future home. Refreshments were served and a string orchestra furnished music.

Not of the "Yellow" Order.

[From the Twilight Orb.]

Judge Estee did not hold court this morning. The court is in session this afternoon, however. Both the Empire and Enterprise bear cases will be up.

INVESTIGATING NEGRO LABOR IN LOUISIANA.

Messrs. Hinds and Collins Now in That State.

HOPE TO GET PLANTATION HANDS.
BUT THEY DON'T WANT ANY
NEGRO DUDES FROM
THE CITIES.

Louisiana Planters Don't Like the Scheme—Declare They Need Every Field Hand in the State.

[From the New Orleans Picayune.]

The scheme for deporting Southern negroes to the Hawaiian Islands to work the sugar plantations grows in its scope.

J. B. Collins, the associate of John Hind in this project, reached the city early Monday morning and joined the latter at the St. Charles. Mr. Collins was the chemist and sugar boiler for the Kohala plantation, one of the largest, while Mr. Hind is owner of the Hawi plantation, and in the labor deal represents the six other plantations on that side of the island of Hawaii.

The two sailed from Honolulu together. They separated in San Francisco and Mr. Collins preceded his companion to Louisiana by several days, going to Monroe, where his relatives reside.

Mr. Collins is a native Louisianian. He was State chemist at one time and when he departed for the Hawaiian Islands about a year ago he was an experimenter in the sugar experiment station at Audubon Park, under Dr. W. C. Stubbs.

Therefore Mr. Collins knows Louisiana, and he knows the Southern negro, and when he approved a plan by which negro families will be taken to Hawaii, he sanctioned what he thinks will be a success.

The Picayune man found Messrs. Collins and Hind at the St. Charles hotel last evening. They had spent a rather busy day comparing notes, laying plans, mapping out an itinerary and keeping in out of the rain.

Mr. Collins surveyed the prospects in north Louisiana pretty thoroughly while in Monroe. He found some families who wanted to try the Hawaiian experience and they will be taken.

"How many will you take for a start?" was asked.

Want Men from Farms.

"Our plan is to take back thirty or forty families, if they can be secured," replied Mr. Collins. "We want young like negroes with small families."

"What are the conditions?"

"The negroes we take will be given a written agreement to pay them \$20 a month, furnish them with houses and sufficient ground for a garden. It will require about \$100 per head to take negroes from Louisiana to Hawaii. We pay that, and then when they get to work perhaps \$50 will be deducted from the wages, a little each month. But if they work faithfully for a stated period, say three years, that \$50 will be refunded."

"From what section do you expect to get these families?"

"Mississippi, Alabama, Georgia, Arkansas, Kentucky and possibly a few from north Louisiana, but we do not expect to go much farther, any, from this State. None will be taken from New Orleans. These fellows are too transient and fly. What we want is the good, old-fashioned, steady dinky who will be there day in and day out."

"You may not fully understand me, but it is not necessary that these negroes should be from the sugar plantations. What we want is good, steady laborers, and they will soon catch onto the work."

The Asiatic contract labor law in Hawaii has been kicked out by federal legislation since the islands were annexed, and it is necessary to get hands for the new sugar estates that are fast developing under the recent discovery of artesian wells, which provide abundant water for irrigating.

Investigating Porto Rican Labor.

Porto Rican labor is being investigated with a view of possibly introducing it in Hawaii. If it should not prove a success then it is believed that Southern negroes will be deported by the thousands. Mr. Collins admitted last night that this modest beginning might develop into an immense business.

Mr. Collins said he and Mr. Hind would visit Mississippi, Arkansas, Alabama, Georgia and Kentucky and thoroughly investigate the case.

They will go up to Reserve plantation today, where they will be the guests of Mr. Godchaux. Mr. Hind, especially, wants to see the equipment on some of the most modern sugar plantations.

Among the day's arrivals at the docks was a number of Louisiana sugar planters who had read of the Hawaiian negro proposition in the Picayune. The consensus of opinion found among them yesterday was that there are no plantation hands to spare.

"What do I think of it?" said Wilson McKerrall, the banker and plantation owner of Franklin, St. Mary's parish. "Why, I think any movement of negroes to the Hawaiian Islands from Louisiana ought to be stopped. Our plantation niggers are scarce. We can't get enough to run our sugar plantations."

upward on way down not 1,000, help in this State has gotten to be 25 per cent Italian, because of the scarcity of negroes? At first the negroes were imported for the grinding season only,

but now they have taken to keeping them the year round. I am opposed to letting any of our negroes go.

"There is nothing that can touch the old-time dinky for handling sugar cane. It comes like second nature to him, and they are already getting scarce."

Negroes Spend Their Money.

"The negroes spend their wages and keep money in circulation. The Italians do not. They hoard it and send it back to sunny Italy. Some bury it in the ground and keep it hidden. The negro does not accumulate. I know a case out in St. Mary parish where the Italian foreman on a plantation had \$5,000 buried in the earth."

"I believe the State should take some cognizance of the proposed deporting of negroes. Louisiana needs her good niggers, and I would favor State legislation to prevent their being taken to Hawaii. However, I doubt the constitutionality of such an act, as the State has no power to dictate the movements of its free citizens."

"Let the Hawaiian planters now in the city go to Mississippi and other Southern States. Those commonwealths probably have a surplus stock. Or here in New Orleans you have a lot of nigger dukes you can spare. Ship them over the sea."

Captain John N. Parr arrived from St. Mary on the evening train, just in time to be interviewed on the Hawaiian idea.

"In the first place," said the veteran sugar grower, pulling his whiskers, "I don't believe many will go. The negro does not like a binding contract. He wants freedom. He wants to work one day and lay off two."

"The Mississippi negro has never been successful when brought to Louisiana, and I doubt if he would be if taken to Hawaii. He has been raised on a little patch of cotton and corn, where he can kill a 'coon' or a 'possum' now and then, and that's all he wants. He's not looking for sugar plantation work."

"I think it would be a splendid thing to ship some of these city niggers out to Hawaii. There is a scarcity of hands on the sugar plantations and we really cannot spare them."

HAS PLANNED GREAT THINGS FOR HAWAII.

SECRETARY WILSON TELLS THE REPUBLICAN WHAT HE PROPOSES DOING.

Besides Establishing Experimental Station and Weather Bureau Will Furnish Other Aids to Agriculture.

[From a Staff Correspondent.]

WASHINGTON, Aug. 15.—Secretary of Agriculture Wilson is enthusiastic over what his great department is going to do for the Hawaiian Islands. He talked about it to the correspondent of The Republican this afternoon.

"What are we going to do for those islands?" asked Mr. Wilson, repeating the question put to him. "Why, we are going to do all that we do for any locality in the United States, and a good deal more if we get the chance. Don't you know that we have already sent the best agricultural scientist in the United States to the islands to make a report on what ought to be done out there? Well, we have done that. The expert is Dr. Stubbs of Louisiana, and he is the very best man that I could find in this country, and you know we have the best experts to be found in any country on the face of the earth. Dr. Stubbs is already in the islands, and he has been told to look into the whole range of this great question of the development of agriculture out there and make a report back to me."

In the first place Dr. Stubbs will make a report on the establishment of an agricultural experiment station in the new Territory. There is a station there already, but we want a good one for our own. Perhaps he will report in favor of co-operating with the present station. Or he may report in favor of locating the station in an entirely different part of the islands. Now, when we get his report upon this matter we will go to work upon our experiment station. The first thing to do will be to select a director for it. That director will be the very best man that can be found for the place. I do not believe that he will be a resident of Hawaii. I do not know the men there; I do know the men here, and I am going to give them a good one. He will go out there and get his experiment station started—build it up from the beginning."

"After that we shall need assistant directors to help the man that I shall send out there. I presume that some of these assistants will be chosen from among the residents of Hawaii. It will all depend upon how good men in that line of business they have out there."

"Then, when the experiment station gets to running, we shall be in a position to be of practical value to the Hawaiians. We shall, of course, establish a weather bureau out there, and we shall give them crop reports, the same as we do in this country. As the postoffice department extends its free delivery mail service we shall be able to distribute weather reports and predictions all over the islands."

"I wish that you would say to the Hawaiians that we are going to be of practical service to them in this matter. We are going to give them every bit of information that can be collected there or anywhere else. All of the important facts that are being gotten out here in Washington will go to the islands, and they will get the benefit of the work of the department here, the same as other sections of the United States get it."